

## **REMARKS**

### **FORMAL MATTERS:**

Claims 38-40 and 56-75 have been examined. Claims 38-40, 56-70 and 73-75 stand rejected. Claims 71 and 72 are objected to as dependent from a rejected base claim.

With entry of this paper, claims 40 and 56-75 are pending.

Claims 1-37 and 41-55 have been previously canceled. Claims 38, 39 and 75 are cancelled without prejudice with entry of this paper. Applicant reserves the right to include canceled claims of this application in one or more divisional applications pursuant to 35 U.S.C. §121.

Claims 40, 60, 69, 71 and 73 have been amended. Claims 40 and 71 have been re-written in independent claim format using the language of previously pending now canceled claims 38 and 39.

Claim 60 was amended to recite a system according to the base claim, and is necessary for the claim to have the correct antecedent basis.

Amendments to claims 69 and 73 merely alter dependency to remain consistent with cancellation of claims 38 and 39 and re-writing of claim 40 in independent format.

None of the amendments add new matter and are made to place the application in condition for allowance or limit outstanding issues on appeal.

Applicant respectfully requests entry of the above amendments as presented.

### **ALLOWABLE SUBJECT MATTER**

Claims 71 and 72 stand objected to as being dependent from a rejected base claim. Applicant thanks the Examiner for pointing out the need for rewriting the claims in independent format. In response, Applicant has re-written claim 71 in independent format. Claim 72 is now dependent from independent claim 71 and therefore no longer dependent from a rejected base claim. Applicant respectfully requests allowance of claims 71 and 72 as indicated in the previous Office Action.

### REJECTIONS UNDER §112, ¶1

Claim 75 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. In an effort to expedite prosecution, Applicant has canceled claim 75 without prejudice.

### REJECTIONS UNDER §102

Claims 38-40, 56-70 and 73-75 are rejected under 35 U.S.C. §102(b) as being anticipated by St. Goar *et al.* (USP 6,629,534). Applicant respectfully traverses the rejection as the '534 patent does not teach the port of Applicant's pending claims.

*Inter alia*, the Office Action characterizes St. Goar *et al.* as disclosing a port adapted to span the atrium as disclosed in Applicant's invention. In support of the argument, the Office Action directs the reader to figure 78 of the '534 patent. Applicant respectfully disagrees.

Figure 78 depicts a vascular catheter 14 entering the heart via a blood vessel, not through a port adapted to span a wall of an atrium, as required by Applicant's claims.

While the stylized heart of figure 78 makes determination of which blood vessel is used to introduce the catheter to the heart impossible, it certainly could not be considered a port adapted to span a wall of an atrium. Even assuming that Figure 78 depicts the catheter 14 entering the heart via the inferior vena cava, there is no description evident, in figure 78 or the text of the '534 patent, as to how the annuloplasty ring 500 is transported from the right atrium to the mitral valve.

Applicant respectfully points out that Figure 78 does not even depict an incision in an atrial wall. Even if such an incision were present, it would be the **result** of inserting the catheter 14 into the heart, **not part of the instrument or system** itself as recited in Applicant's pending claims. Therefore the '534 patent can not anticipate Applicant's claims as it fails to teach each element found therein. Accordingly, Applicant respectfully requests the rejection as to St. Goar be withdrawn.

CONCLUSION

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number UOMB-001DIV.

Should the Examiner feel that a telephonic interview or other clarification would be helpful, the undersigned is available at 650-833-7740 at the Examiner's pleasure.

Respectfully submitted,  
BOZICEVIC, FIELD & FRANCIS LLP

Date:

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By:

Karl Bozicevic  
Registration No. 28,807

BOZICEVIC, FIELD & FRANCIS LLP  
1900 University Avenue, Suite 200  
East Palo Alto, California 94303  
Telephone: (650) 327-3400  
Facsimile: (650) 327-3231